87-446 (1)

Supreme Court, U.S.
FILED
SEP 16 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

KENNETH PAUL KELLER,

Appellant,

v.

State of Oklahoma,

Appellee,

On Appeal from the Court of Criminal Appeals of the State of OKlahoma

---

Jurisdictional Statement - State Criminal Case

Kenneth Paul Keller
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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Questions Presented

Was Appellant denied due process of law, by the defective performance of counsel who failed to challenge any of several prejudiced jurors, refused to allow the Appellant (defendant) to testify in his defense to prove his innocence, failed to cross-examine the state's witness to discredit her perjured testimony, waived the recording of relevant elements of the trial(without the knowledge or permission of the Appellant(defendant), including the voir dire examination, counsel's opening or closing statements and the Judge's instructions to the jury, which deviated from the printed instructions contained in the Clerk's record, significantly?

Does the state statute violate the constitutional rights of its citizens, when it requires no physical evidence to convict an innocent man; only the perjured testimony of the state's witness?

Does the state statute violate the constitutional guarantee for equal protection of the laws, when the District Attorney refuses to file charges against a police officer who commits an immoral act and states that the fine for an indecent exposure conviction is fifty ($50.00) dollars, while a conviction for an identical charge brought against another person arbitrarily, results in a ten-year prison sentence and up to $10,000.00 fine, for an innocent man?

Was Appellant denied due process of law, when the Judge of the trial court abused his discretion in not permitting the Appellant (defendant) to withdraw his plea of guilty under the Post- Conviction Relief Act, after learning that he had pled guilty to a crime that he did not commit ?
(As a result of this guilty plea, the Appellant was again arrested and convicted for crimes that he did not commit.)

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APPENDIX

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F. Article From the Daily Oklahoman.

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H. Coyle v. State of Oklahoma No. C-84-222 Okl.Cr. (1985)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

KENNETH PAUL KELLER,

Appellant,

v.

State of Oklahoma,

Appellee,

Jurisdictional Statement- State Criminal Case

Citation To Opinions Below

The unanimous opinion of the Court of Criminal Appeals of the State of Oklahoma, No. F-85-555, is annexed as Appendix A.

Jurisdiction

In affirming the appellant's conviction, the Oklahoma Court of Criminal Appeals sustained

the constitutionality of Title 21 Oklahoma Statute 1021 (1) which authorizes arbitrary felony charges of Indecent Exposure on selected individuals and upon conviction shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not less than thirty days nor more than ten years, or both fine and imprisonment.

The judgment of the Court of Criminal Appeals of the State of Oklahoma was entered on June 8, 1987, and is annexed as Appendix A. A notice of appeal was filed in District Court, Oklahoma County, the court possessed of the record, on September 4, 1987, and is annexed as Appendix D. The jurisdiction of this Court is conferred by Title 28, United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the Court to review the judgment of the Court of Criminal Appeals of the State of Oklahoma. Whitfield v. State of Ohio, 56 S.Ct. 532 (1936), United States v. Selva, 559 F.2d 1303, (1976),

Baker v. Carr, 82 S. Ct.691 (1962), United States v. Taylor, 607 F,2d 153(1979), United States v. Workcuff, 422 F.2d 700 (1970).

Constitutional Provisions Involved

United States Constitution, Amendments 5, 6 and 14, as set forth in Appendix E.

Statutory Provisions Involved

Title 28 United States Code, Section 753 (b), ". . . Requires the recording of all proceedings in criminal cases had in open court." This provision is mandatory and the court has the duty to require compliance. A local rule or practice cannot override a statute of the United States.

Statement of the Case

As a witness for the state, Lori Easter testified that on August 26, 1984, at approximately 4:15 a.m. a man was seen masturbating near a convenience store where she worked in Oklahoma City. The sus-

pect was described as about five foot eleven with blue eyes which were widely dilated as if he had been using drugs. The witness stated that she tried to spray him with a garden hose, but slipped and fell, then went inside, locked the door and called the police. The state's witness identified the appellant as the suspect, but only after the presiding Judge, William R. Said, permitted Oklahoma City detective Jerry D. Scott to point out the appellant to the state's witness, Lori Easter, from the door connecting his chambers to the courtroom, just prior to her taking the oath. Defense counsel did not cross-examine the state's witness to inquire about her identification of the appellant or her description of the suspect, which differs from the appellant, since the appellant is six foot two and according to the TASC report from the Oklahoma Department of Corrections, dated September 4, 1984, the appellant was free of drugs for 60 days prior to the date of the report. The TASC report is annexed as Appendix G. Defense counsel failed to reveal any of these discrepancies in the witnesses testimony.

Defense counsel did not challenge any of several prejudiced jurors, who testified that they would not believe the testimony of friends or family members because they would lie for the accused. One juror stated that the defendant was guilty until proven innocent, yet none of these prejudiced jurors were dismissed. Recording of the voir dire examination was waived apparently, but appellant was not informed.

Appellant pleaded with counsel to allow him to testify in his own defense, to explain to the jury that the prior conviction for Indecent Exposure in Lawton, Oklahoma, was actually a guilty plea for using the toilet in public. Counsel denied the appellant's request to testify, resulting in a conviction in this trial. A related case, which involved another false charge for indecent exposure, No. CRF-84-4542, clearly shows that when the appellant was afforded the opportunity to explain to the jury that the guilty plea for Case No. CRF-82-637, was the result of an explanation by his attorney, Dan Brown, that he would be pleading guilty to a misdemeanor(using toilet in public), yet the charge

became a felony conviction, where the presiding Judge William M. Roberts refused to permit the appellant to present factual information to explain the actual events. Defense counsel, Dan Brown, took the appellant to the judge's chambers and repeated the instructions that appellant was to plead guilty to "indecent exposure" and that it meant only a misdemeanor which would result in a deferred sentence as agreed to by the District Attorney's office. This information was clearly a misrepresentation of the facts by defense counsel.

According to Lawton police officer, Robert Huskey, who was off duty and fired five shots at appellant, when he arrested him for using the toilet in public, he intended to get Keller again and again as stated in public places. These charges can be expected again, which would result in a minimum 20 year prison sentence for a third conviction.

The Questions Presented Are Substantial

In the second conviction now appealed from, for which the appellant received a ten year prison sentence, the appellant was denied a trial by an

impartial jury and effective assistance of counsel as guaranteed by the sixth amendment to the United States Constitution. The record, lacking important elements of the trial which were prejudicial to the appellant, make it impossible to present an effective appeal.

A statute that allows the perjured testimony of a witness to convict an innocent man with no physical evidence can not be constitutional when it deprives a citizen of his right to life, liberty and equal protection of the laws.

The former conviction, accomplished by misrepresenting the factual basis for a guilty plea, denied the appellant's right to due process of law, guaranteed by the fifth and fourteenth amendments to the Constitution of the United States.

Conclusion

The questions presented by this appeal are substantial and require plenary consideration by the Court for their resolution.

Respectfully submitted,

Kenneth Paul Keller

Kenneth Paul Keller
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IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KENNETH PAUL KELLER,
APPELLANT,
-vs-
STATE OF OKLAHOMA,
APPELLEE.
No. F-85-555

OPINION

BUSSEY, Judge:

The Appellant, Kenneth Paul Keller, was convicted in the District Court of Oklahoma County, Case No. CRF-84-4541, of Indecent Exposure after Former Conviction Of a Felony, for which he received a sentence of ten years with six years suspended. From this judgment and sentence he appeals raising four assignments of error.

Briefly stated, the facts show that on August 26, 1984, at about 4:15 a.m., Lori Easter was working outside a convenience store where she was employed, in Oklahoma City. Hearing a noise, she turned and saw a man, whom she identified in court as the appellant, about four feet away from her, masturbating. She tried to spray him with the

garden hose she was holding, but failing, she went back into the store and locked the door.

The appellant called witnesses who testified that he was in Lawton on August 25 and 26, 1984.

As his first assignment of error, the appellant contends that he was deprived of effective assistance of counsel because his trial counsel did not cross-examine the State's eyewitness. In order to establish that counsel is so defective that a conviction must be reversed, the appellant must show that counsel's performance was deficient, and that the deficient performance prejudiced the defense. Stickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Appellant speculates about what a cross-examination might have shown, and what impact the failure to cross-examine may have been on the jury, but such speculation does not establish that trial counsel's performance was deficient. Several alibi witnesses were presented in an attempt to show that the appellant was in Lawton during the time the crime was committed. Presenting an alibi defense instead of rehashing the testimony of the eyewitness and possibly further

damaging the appellant's case is a valid strategy. This assignment of error is without merit.

In his second assignment of error, the appellant claims that there was insufficient evidence to sustain the verdict. The test for sufficiency of the evidence is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307,99 S.Ct.2781, 61 L.Ed.2d 560 (1979). A review of the record shows that the eyewitness clearly viewed the appellant in a well lighted area and made a positive identification of him in court. Weighing testimony, determining the credibility of the witnesses, and resolving conflicts in the testimony is the province of the jury. Jones v. State, 648 P. 2d 1251 (Okl. Cr.1982). Under the test stated in Jackson, we find that sufficient evidence was presented for the jury to find the appellant guilty as charged beyond a reasonable doubt.

In his third assignment of error, the appellant argues that the indecent exposure statute, 21 O.S.1981, Section 1021(1) is unconstitutionally vague. That statut

provides that "Every person who willfully (1) Lewdly exposes his person, or private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby;... is guilty of a felony . . . . " The appellant's argument is that the use of the terms "offended" and "annoyed" places too much emphasis on the sensitivity of the alleged victim, peace officer, judge or jury. Whether or not a criminal statute is unconstitutional is determined by whether persons of common intelligence must guess at its meaning. Pegg v. State, 659 P.2d 370 (Okl.Cr.1983). The statute in question proscribes willful, lewd exposure of one's person or private parts in any public place, or wherever there are persons to be offended or annoyed by such action. The statute does not make offensive or annoyance an element of the crime, but only the presence of the persons "to be offended or annoyed." A person of common intelligence would certainly realize that such a statute forbids masturbating in a public place in front of a stranger. A person to whom a statute may be constitutionally applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in situations not before

this Court. See Broadrick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Therefore, this assignment of error is likewise meritless.

Finally, the appellant complains that the trial court improperly overruled his demurrer to the evidence and motion to dismiss after the close of the State's case. As this argument is based on the assumption that 21 O.S.1981, Section 1021 is constitutionally void for vagueness, we need not address this assignment of error as we have found the statute to be constitutional.

The judgment and sentence is AFFIRMED.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA, THE HONORABLE WILLIAM R. SAID, DISTRICT JUDGE

KENNETH PAUL KELLER, appellant, was convicted in the Oklahoma County District Court, Case No. CRF-84-4541, of Indecent Exposure After Former Conviction of a Felony for which he received a sentence of ten years with six years suspended. AFFIRMED.

John N. Fleur
Lawton, Oklahoma
Attorney for Appellan

MICHAEL C. TURPEN
ATTORNEY GENERAL
TOMILOU GENTRY LIDDELL
ASSISTANT ATTORNEY GENERA
STATE OF OKLAHOMA
OKLAHOMA CITY, OKLAHOMA
Attorneys for Appellee

OPINION BY BUSSEY, J.
BRETT, P.J., CONCURS IN RESULTS
PARKS, J., CONCURS

Authorized for Filing on June 8, 1987

James W. Patterson, Clerk

COMPLAINT AND INFORMATION

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR COMANCHE COUNTY, OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff	
	COMPLAINT
vs.	AND
KENNETH P. KELLER	INFORMATION
Defendant	CRF -82-637

STATE OF OKLAHOMA)
) SS.
COMANCHE COUNTY)

I, Dick W. Tannery, District Attorney-District 5 of County of Comanche and State of Oklahoma, duly authorized and empowered by law to inform of offenses committed and triable within said County and State, in the name and by the authority of the State of Oklahoma, come now here and give the Court to understand and be informed, that at and within said County and State, on or about the 27th day of August, 1982 KENNETH P. KELLER then and there being, did then and there, wilfully, unlawfully, and wrongfully commit the crime of INDECENT EXPOSURE in the manner and form as follows, to-wit: that said KENNETH P. KELLER did lewdly and feloniously expose his person and private parts in a place, to-wit: at Taco Bell, 6114 Cache Road., in the City of Lawton,

Comanche County, and in a place where there were present other persons to be offended and annoyed thereby, to-wit: Robert Huskey,

(21-1021)

contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Dick W. Tannery
District Attorney

By Alberta Allen
Assistant District Attorne

State of Oklahoma)
) VERIFICATION
Comanche County)

Cecil Davidson, LPD of lawful age, being duly sworn on his oath deposes and says: That he has read the foregoing complaint and information and knows the contents thereof, that the same is true in substance and in fact.

Subscribed and sworn to before me this 27th day of August, 1982

Janice Mitchell, Court Clerk

By _____
Maureen Adams, Deputy

DEFENDANT'S EXHIBIT
3-14-85

THE STATE OF OKLAHOMA)
) SS
OKLAHOMA COUNTY)

In the District Court of the Seventh Judicial District of the State of Oklahoma, Sitting in and for Oklahoma County, Oklahoma.

THE STATE OF OKLAHOMA, Plaintiff,)
)
-vs-)
) No. CRF-84-454
KENNETH PAUL KELLER)
DOB: 4-1-62 Defendant)
)

SENTENCE SUSPENDED EXCEPT AS TO A PART

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 14th day of March, 1985, the same being a judicial day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant KENNETH PAUL KELLER being personnaly present in open court, and being duly represented at all appearances before the court by his attorney of record and having been legally charged with the offense of INDECENT EXPOSURE AFTER FORMER CONVICTION OF A FELONY and having been duly informed of the nature of the charge and

having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense of INDECENT EXPOSURE AFTER FORMER CONVICTION OF A FELONY and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause why judgment and sentence should not be pronounced against the defendant and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of INDECENT EXPOSURE AFTER FORMER CONVICTION OF A FELONY

It is Therefore, Ordered, Adjudged and Decreed by the Court, that KENNETH PAUL KELLER is sentenced to a term of TEN (10) YEARS/ (THE FIRST FOUR (4) YEARS TO BE SERVED IN THE PENITENTIARY; REMAINDER OF SENTENCE TO BE SUSPENDED) under the direction and control of the Department of Corrections of the State of Oklahoma; and said defendant is committed to the said Department of Corrections at the Oklahoma State Penitentiary at McAlester, Oklahoma, pursuant to the Oklahoma Corrections Act of 1967 and pursuant to the rules of said Department, for the crime of Indecent Exposure After Former Conviction of a Felony, said term of sentence

to begin at and from the delivery of the defendant to the Warden of the State Penitentiary at McAlester, Oklahoma; and that said defendant pay the cost of this prosecution, taxed at $ 117.40, for which judgment is hereby rendered against the defendant; and thereupon the defendant is by the court notified of his right of appeal.

It Is Further Ordered, Adjudged and Decreed by the court that the Sheriff of Oklahoma County, Oklahoma, trnsport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the said defendant according to this judgment, sentence and order, and that the clerk of this court do immediately certify, under the seal of the court, and deliver to the sheriff of Oklahoma County, Oklahoma, two copies of this judgment, sentence, and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be warrant and authority of said Sheriff of Oklahoma County, Oklahoma, for the transportation and

imprisonment of the said defendant as hereinbefore provided. SAid last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon.

(COURT COST AND VICTIM COMPENSATION FUND IN THE AMOUNT OF $50.00 TO BE PAID WITHIN 6 MONTHS AFTER RELEASE FROM THE PENITENTIARY.)

Attest: Tom Petuskey, Court Clerk

William R. Said, District Judge

By Terry Pinkerton, Deputy Court Clerk

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

Kenneth Paul Keller,

Appellant,

v.

State of Oklahoma,

Appellee,

On Appeal from the Court of Criminal Appeals of the State of Oklahoma

---

NOTICE OF APPEAL

Kenneth Paul Keller
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Oklahoma City, OK
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IN THE COURT OF CRIMINAL APPEALS

OF THE STATE OF OKLAHOMA

KENNETH PAUL KELLER, APPELLANT,)
)
v.) No.
)
STATE OF OKLAHOMA, APPELLEE,)

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

Notice is hereby given that Kenneth Paul Keller, the appellee above named, hereby appeals to the Supreme Court of the United States from the final order of the Court of Criminal Appeals of the State of Oklahoma, entered herein on June 8, 1987.

This appeal is taken pursuant to 28 U.S.C. Section 1257 (2).

Kenneth Paul Keller

Kenneth Paul Keller, Pro se,
8200 Wilshire Ridge Road
Oklahoma City, OK 73132
(405) 728-2079

Proof of Service- Affidavit

I, Kenneth Paul Keller, Appellant herein, depose and say that on the fourth day of September, 1987, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on The Court of Criminal Appeals of the State of Oklahoma, appellee herein, by delivering the same to the Clerk, located at Room 230, State Capitol Building, Oklahoma City, OK 73105, to Robert H. Henry, Attorney General of the State of Oklahoma, located at 112 State Capitol Building, Oklahoma City, OK 73105, and to Tom Petuskey, Clerk of the Oklahoma County District Court, located at 419 Oklahoma County Office Building, Oklahoma City, OK 73102.

Kenneth Keller
Kenneth Paul Keller

Subscribed and sworn to before me, this 4th day of September, 1987.

Paula J. Knipe
1-25-88

UNITED STATES CONSTITUTION,

AMENDMENTS V, VI, AND XIV AND STATUTORY PROVISIONS

1. Amendment V. No person shall be. . . deprived of life, liberty, or property, withour due process of law, ...

2. Amendment VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . . to be confronted with the witnesses against him, . . . and to have the assistance of counsel for his defense.

3. Amendment XIV. Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28 United States Code Annotated Section 753(b)

" . . . Requires the recording of "all proceedings in criminal cases had in open court." This provision is mandatory and the court has the duty to require compliance. A local rule or practice cannot override a statute of the United States."

ARTICLE FROM THE DAILY OKLAHOMAN

(dated Friday, April 11, 1986)

MOORE POLICE OFFICER SUSPENDED BECAUSE OF 'EXCESSIVE HORSEPLAY'

By Pat Gilliland

MOORE- A Moore police officer was suspended without pay three days last month for 'Excessive horseplay,' police confirmed this week.

Police chief Richard Mills and department spokesman Kevin Bagley confirmed that master patrol officer Larry Wilson was suspended in connection with an indecent exposure complaint.

The chief said a records clerk reported that Wilson exposed himself while on duty at the police station. But an investigation found the exposed item was a fake object that resembled human anatomy, Mills said.

"Wilson didn't think. He put his mind on vacation," the chief said about the incident.

"When you're a police officer, you take a position of trust. We work for the public. We have to maintain decorum."

Cleveland County District Attorney Tully McCoy said his office declined to file charges because the evidence indicated the complaint stemmed from a prank. "There was a piece of evidence seized... that was the item exposed," McCoy said. "The thing that was exposed was not any part of the person's anatomy." McCoy said an officer passed a polygraph test. He would not confirm that the officer was Wilson.

Mills said he suspended Wilson after an internal investigation of a departmental complaint from records secretary Rita Jackson. Jackson filed a criminal complaint March 26. The report states Jackson filed the complaint because she was dissatisfied with the results of the internal probe.

The incident occurred about 1:30 p.m. March 14 at the police station, the report states. Jackson, 37, alleged three officers followed her through a hallway, making suggestive sexual comments and touching her against her will. The suspect's name was blocked out of a copy of the report available to reporters. Officers Bagley and Mike Jaques were listed as witnesses. The report states Jackson said she went through a hallway into the old city hall building, where she locked the door. She said in the report that she looked through the window and saw an officer expose himself as he stood in the hallway.

Mills said Jackson's story on the criminal report differed from her original statement. He said Jackson told him she thought the truth would come out during the investigation. He said he did not know if any action would be taken against Jackson.

"There's the possibility she really thought she saw what didn't happen," Mills said. "There's also a possibility she has a personal bias against the man." Mills said the fine for an indecent

exposure conviction in municipal court is $50.00. Wilson took almost a $200.00 cut in pay for the suspension....

(The remaining portion of the report is irrelevant for our purpose in this case.)

TREATMENT ALTERNATIVES TO STREET CRIME

Termination Report

Client: Keller, Kenneth Date of Report: 9/4/84

Date of Termination: 9/4/84

Current Address: 8006 N.W. 87th St. OKC,OK

Case # 82-637

Treatment Program: STAT Case # 83-07-1508

Legal Status: Probation and TASC County: Comanche

Attorney: Dan Brown P.O. Jim Rabon-South

XXX The above client has successfully completed participation in TASC.

Comments: Mr. Keller was admitted to TASC program on 7/28/83. Client was court ordered to this program on charges of Indecent Exposure. Mr. Keller did not have any violation of Tasc requirements, as his treatment report shows he progressed and found self worth. Since client complied with all TASC rules in the last 60 days of his participation he is therefor eligible for a successful termination.

This information has been disclosed to you from records whose confidentiality is protected by Federal law. Federal regulations (42 CFR Part 2) prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.

(Signature illegible)
Case Manager

(Signature illegible)
TASC Coordinator

DOC 024039

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA (FILED September 25, 1985)

GEORGE PATRICK COYLE, Petitioner, -vs- STATE OF OKLAHOMA, Respondent,	)	No. C-84-222

O P I N I O N

PARKS, PRESIDING JUDGE:

The petitioner, George Patrick Coyle, entered a plea of guilty to the charge of Robbery and Fear, First Degree, in the District Court of Comanche County, Oklahoma, Case No. CRF-83-773. The guilty plea was entered without a recommendation from the District Attorney. The trial court accepted the plea and sentenced the petitioner to fifteen (15) years' in prison. Petitioner filed a timely application to withdraw his plea of guilty. Subsequent to the evidentiary hearing on petitioner's application, the trial court denied petitioner's request. Petitioner has filed a petition for

Writ of Certiorari in the form and within the time allowed. We assume jurisdiction.

Petitioner raises one issue in his appeal. He alleges the trial court failed to follow the minimum requirements of King v. State, 553 P.2d 529 (Okl. Cr. 1976). therefore rendering as fundamentally defective the acceptance of his plea of guilty. We agree.

The alleged facts underlying the charge filed against the petitioner will not be recited, as they are irrelevant to a disposition of this case. An examination of the record made at the hearing on petitioner's offer to plead guilty reveals that two of the three major requirements as set forth in King were not met. The trial judge made the requisite judicial determination of the petitioner's competency by asking defense counsel if he thought petitioner was competent, and by asking the petitioner his name, age and if he thought

himself competent. This brief dialogue falls short of satisfying the requirement of an "appropriate interrogation . . . regarding the defendant's past and present mental state . . . ," King v. State, supra at 534-I. A. The other deficiency was the trial court's failure to determine " . . . from the defendant that there was a factual basis for the plea of guilty . . . ," King v. State, supra at 535-III, B-1. The trial court accepted petitioner's guilty plea to the charge as set out in the Information, and then asked if the State wanted to say anything before judgment and sentence, since " . . . the court knows very little, if anything, about this case."

This Court will not dictate to the district judges of this state how to conduct hearings on pleas of guilty to satisfy the mandate of King. The guidelines of King were carefully prepared to aid the trial courts without interfering in their judicial function. Many of the judicial districts in this state are to be commended for their efforts in devising procedures that meet these requirements.

One method is the practice of asking the defendant to state in his own words what happened. Another method that has been used is a form that has been worked up entitled "Petition to Enter a Plea of Guilty," which calls for the signature of the defendant, and it is recommended that the defendant complete this form in his own handwriting. This latter method provides a good record to supplement the transcript of the hearing. It also provides some insight into the defendant's competency for this Court to examine on review.

In this case, the trial court abused its discretion in not allowing petitioner to withdraw his guilty plea, and for this reason, the conviction will be REVERSED and REMANDED for further proceedings consistent with the views herein expressed.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY, OKLAHOMA, THE HONORABLE J. WINSTON RABURN, DISTRICT JUDGE

GEORGE PATRICK COYLE, appellant, was convicted of Robbery by Force and Fear, First Degree, in the District Court of Comanche County, Oklahoma, Case No. CRF-83-773, sentenced to fifteen (15) years, and appeals. REVERSED and REMANDED.

ELAINE MEEK
ASSIST. APPL. PUBLIC DEFENDER
300 TIMBERDELL ROAD
NORMAN, OK 73019
Attorney for Petitioner

No Appearance by Respondent

OPINION BY: PARKS, P.J.
BRETT, J.: SPECIALLY CONCURS
BUSSEY, J.: DISSENTS

BRETT, Judge: Specially concurring

I concur with the opinion of my brother Judge Parks. However, I wish to add a few comments of my own regarding the requirement in King v. State, 533 P.2d 529, 535 (Okl.Cr.1976), that trial courts determine "from the defendant that there is a factual basis for the plea."

It is clear to me that no inquiry was made by the trial judge regarding the existence

of a factual basis for the plea. However, part of the problem may be that we have never had occasion to address this topic. I wish to explain here my understanding of this requirement so that the District Courts may have some guidance.

I believe the correct method for determining the factual validity of a guilty plea is that found in the A.B.A. Standards For Criminal Justice, Section 14-1.6 (Little-Brown 1980), which states:

> (a) In accepting a plea of guilty . . . , the court should make such inquiry as may be necessary to satisfy itself that there is a factual basis for the plea.
>
> (b) Generally, in determining the accuracy of a plea of guilty, the court may require the defendant to make a detailed statement in the defendant's own words concerning the offense to which the defendant is pleading.
>
> (c) Whenever a defendant . . . pleads guilty and simultaneously denies culpability, the court must take special care to make certain that there is a factual basis for the plea. The offer of a defendant to plead guilty should not be refused solely because the defendant refuses to admit culpability. Such a plea may be refused where the court has specific reasons for doing so which are made a matter of record.

I believe the procedure recommended in sub-section (b) is the "method (which) best accomplishes the intended purpose" of the factual basis requirement. Barkai, Accuracy Inquiries for All Felony and Misdemeanor Pleas: Voluntary Pleas but Innocent Defendants?, 126 U. Pa. L. Rev. 88, 135 (1977). See also Santobello v. New York, 404 U.S. 257,261, 92 S.Ct. 494, 498, 3o L.Ed. 2d 427 (1971). This method gives " the defendant . . . an opportunity to give his version of the facts and the judge gains insight into such factors as specific intent and possible defenses. A presentation by the defendant is likely to suggest questions to the judge which could serve as the starting point for an ensuing colloquy." Barkai, supra at 135-136.

Other methods may also be useful and practical, given the situation. For example, on some occasions the defendant's statements may not be understood. In such a case his admission to those facts stated in the Information may be deemed

to present a valid factual basis for the plea. See Henderson v. Morgan, 426 U.S. 637, 649, n.2, 96 S.Ct. 2253, 2260, n.2, 49 L.Ed. 2d 108 (1976) (White, J., joined by Stewart, Blackmun, and Powell, JJ, concurring).

Although the United States Supreme Court has yet to call this requirement a necessary part of due process, the requirement serves other important purposes:

> First, it assures that a defendant who seeks to plead guilty is in fact guilty. Persons whose conduct does not fall within the charges brought by a prosecutor should not plead guilty, but unless a factual basis is required, the risk of innocent persons being adjudicated guilty is enhanced. In addition, the finding of a factual basis, when made a matter of record . . . , eliminates post conviction fact-finding proceedings aimed at determining the accuracy of guilty pleas. Finally, the information developed in determining the presence of a factual basis is often quite useful to the court at sentencing.

A.B.A. Standards, Commentary, Section 14-1.6 (a).

The requirement that a factual basis Must be shown to support the guilty plea is an important part of our criminal jurisprudence, and should

be strictly adhered to. I, therefore, concur in the opinion of Judge Parks.